Yuvarani w/o Ravindra v Percetakan Kum Sdn Bhd & Ors and another suit

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NOS S5–23–45 OF 2003 AND S6–23–58 OF 2003
VARGHESE GEORGE JC
1 APRIL 2010

Tort — Defamation — Libel — Injury to reputation — Plaintiff alleged defamed by materials printed and published in monthly magazine — Whether passages appeared in magazine defamatory of plaintiff — Whether translations to Bahasa Malaysia accurate and reflected original contents of material in Tamil — Whether natural and ordinary meaning of words or innuendo used in passages defamatory — Whether second to fourth defendants successfully discharged burden to establish justification — Whether defence of innocent dissemination available to first defendant — Defamation Act 1957 s 8

The plaintiff was and continues to be a recognised actress of some standing in films and serials produced in South India. The plaintiff alleged that she had been defamed by materials printed and published in two issues of a monthly magazine called the Indian Movie News ('IMN'), namely the April 1998 and August 1998 issues ('the two issues of the IMN'), and thus commenced an action against the publishers and distributors of the IMN for damages in libel. The third defendant was at all material times the publisher of the IMN while the second and fourth defendants were the distributors of the IMN in Peninsular Malaysia and Singapore respectively. The first defendant was the printer who was contracted by the third defendant publisher to print the IMN. It was the plaintiff's case that as a result of the publication of the defamatory passages in the two issues of the IMN ('the two defamatory passages') she had been injured in her standing as a film and drama actress and her character and reputation had been brought into odium and contempt. Those two defamatory passages in the Tamil language were translated into Bahasa Malaysia ('BM') by a certified translator attached to the High Court and both versions were set out in the plaintiff's statement of claim. The plaintiff's statement of claim also set out particulars on how the two defamatory passages when read together portrayed the plaintiff negatively. At the trial the defendants took serious issue with the translated versions of the two defamatory passages and submitted that the translations were not accurate and did not reflect the original contents of the material in Tamil. At the same time, the defendants did not call any

witnesses or adduce other alternative certified translations into BM of the two defamatory passages in the Tamil language, for purposes of comparison. The second to fourth defendants also contended that the two defamatory passages were not capable of bearing the defamatory meaning as pleaded in the statement of claim. The second to fourth defendants further submitted that the plaintiff had failed to plead particulars of innuendoes relied on in her statement of claim and to produce any extrinsic evidence to show the meaning of the innuendoes as claimed by the plaintiff. The first defendant submitted that its involvement was restricted to the mechanical process of printing, binding and packing of the IMN and that therefore the contents and implications of the two defamatory passages were not within its knowledge at all. The first defendant thus argued that it was entitled to the common law defence of innocent dissemination. The two issues to be determined in this case were whether the two defamatory passages referred to by the plaintiff to have disparaged her character and reputation were indeed defamatory, and if so, whether the defendants had successfully discharged the burden on them to establish their respective pleaded defences.

Held, allowing the plaintiff's action in part with costs:

(1) Since there was no contradictory evidence before the court in respect of the defendants' objection to the translations of the two defamatory passages into BM, the court accepted the certified translations into BM tendered by the plaintiff as the proper and applicable translations (see para 16).

(2) There was no slang, technical or foreign words used in the two defamatory passages that required extrinsic evidence to derive their defamatory meaning. The translations into BM were direct and comprehensible of the meaning of the offending statements in Tamil. In law only a true innuendo with a secondary meaning, as relied upon by the plaintiff, is required to be set out as particulars and proved at trial. In the present case, a construction of the natural and ordinary meaning and the inferred or natural meaning of the words and statements in the two defamatory passages in its entirety had the tendency to injure the plaintiff in her standing, character and reputation and to bring her name into scandal and contempt. Even if the two defamatory passages were considered separately they would have the tendency of casting a slur on the plaintiff's character and reputation. In any case, based on established authority each of the said two defamatory passages was to be read in its entirety and as a whole piece and need not as the defendants contended have to be isolated from each other and tested individually. Thus, reading

the two defamatory passages as one piece was more than justifiable in the particular circumstances of this case (see paras 34–35 & 39–41).

(3) The two defamatory passages published did not originate in any form from or were attributable to the plaintiff at all. Those statements did not have as their foundation some interview given or statement made by the plaintiff. As such, the words complained of were capable of and were in fact defamatory of the plaintiff materially to the effect pleaded in the statement of claim (see paras 46 & 48).

(4) Although the editor of the IMN testified that the source of the materials published about the plaintiff in the two issues of the IMN was based on 'news' widely published in Tamil Nadu, no contemporaneous documentary evidence of such alleged source material was placed before the court. Thus, there was no form of independent verification undertaken by those responsible at IMN to check or confirm the truth of the statements on the plaintiff contained in the two issues of IMN prior to it being published. Thus, to that extent, the two defamatory passages were sent for printing and publishing recklessly and maliciously by the third defendant, without regard to and any concern for its truth (see paras 52–53).

(5) It is incumbent upon any defendant relying on the defence of justification in a libel action to establish not only the truth of the defamatory facts alleged but also to show that the basic facts and the inferences arising therefrom as true. However, the second to fourth defendants in this case relied on s 8 of the Defamation Act 1957 but failed to show how or where the 'substantial truth in some' of the statements complained of by the plaintiff in this action had been established and both the provisos in that section had not been shown to have been satisfied. As the sting of the defamatory statements in the two defamatory passages had not been shown by the second to fourth defendants as being true as a matter of fact, the defence of justification raised by them failed (see paras 55, 57–58).

(6) The third defendant's attempt to drag in extraneous matters related to the plaintiff only amounted to evidence of bad general reputation and did not support the defence of justification pleaded by the second to fourth defendants in response to the libel claim of the plaintiff (see para 57).

(7) The first defendant had shown that it did not know or that it had any reason to believe that it was contributing to the publication of defamatory material when it undertook the printing of the two issues of IMN containing the two defamatory passages. As such, the first defendant was not reckless or careless in undertaking the printing of the

two issues of IMN for the third defendant and had a good defence of innocent dissemination (see para 65).

(8) Damages in a libel action are awarded and assessed on a compensatory basis for injury to feelings and to some extent to vindicate the plaintiff's reputation in the eyes of the public. In the present case, the plaintiff's career did not appear to have suffered or been adversely affected by the publication of the defamatory material. There was also uncontradicted evidence that only between 10,000 to 15,000 copies of the IMN were printed each month in the year 1998 and they were sold in Malaysia to either subscribers or over the counter at bookstalls with a minimum number of copies sent overseas. Thus, in the ordinary course of events it could be concluded that the readership of the IMN was rather restricted to the Indian community interested in Indian film related news. As such, a single or global sum of RM70,000 was awarded as damages to the plaintiff, with no award for aggravated or exemplary damages (see paras 67, 69–70, 73 & 74(a)).

[Bahasa Malaysia summary

Plaintif adalah bekas dan masih dikenali sebagai pelakon ternama dalam filem-filem dan drama bersiri yang diterbitkan di Selatan India. Plaintif mendakwa bahawa dia telah difitnah oleh beberapa bahan cetakan dan diterbitkan dalam dua isu majalah bulanan Indian Movie News ('IMN'), iaitu keluaran April 1998 dan Ogos 1998 ('dua keluaran IMN'), dan oleh itu memulakan suatu tindakan terhadap penerbit dan pengedar IMN untuk ganti rugi fitnah bertulis. Defendan ketiga pada setiap masa material merupakan penerbit IMN sementara defendan kedua dan keempat merupakan pengedar IMN di Semenanjung Malaysia dan Singapura. Defendan pertama merupakan pencetak yang dilantik oleh defendan ketiga untuk mencetak MNI. Adalah menjadi kes plaintif bahawa akibat daripada penerbitan perenggan-perenggan yang memfitnah dalam dua keluaran IMN ('dua perenggan memfitnah') kedudukannya sebagai pelakon drama dan filem terjejas dan keperibadian dan nama baiknya telah tercemar dan dibenci. Dua perenggan memfitnah dalam bahasa Tamil telah diterjemahkan dalam Bahasa Malaysia ('BM') oleh penterjemah bertauliah Mahkamah Tinggi dan kedua-dua versi dinyatakan dalam penyata tuntutan plaintif. Penyata tuntutan plaintif juga menyatakan butiran apabila kedua-dua perenggan memfitnah tersebut dibaca bersama, memberi gambaran buruk kepada plaintif. Semasa perbicaraan, defendan-defendan memandang serius tentang versi terjemahan kedua-dua perenggan memfitnah tersebut dan menghujah bahawa terjemahan-terjemahan tersebut tidak tepat dan tigak menggambarkan kandungan asal bahan tersebut dalam bahasa Tamil. Pada masa yang sama,

defendan-defendan tidak memanggil saksi atau mengemukakan terjemahan BM lain yang disahkan kedua-dua perenggan memfitnah tersebut bagi tujuan perbandingan. Defendan kedua hingga keempat juga menghujah bahawa kedua-dua perenggan memfitnah tersebut tidak boleh membawa maksud memfitnah seperti yang diplidkan dalam penyata tuntutan. Defendan kedua hingga keempat selanjutnya menyatakan bahawa plaintif gagal memplid butiran sindiran seperti yang dinyatakan dalam penyata tuntutannya dan mengemukakan apa-apa keterangan ekstrinsik yang menunjukkan maksud sindiran tersebut seperti yang didakwa oleh plaintif. Defendan pertama menghujah bahawa penglibatannya terhad kepada proses mekanikal mencetak, menjilid dan membungkus IMN dan oleh itu, kandungan dan akibat kedua-dua perenggan memfitnah tersebut tiada langsung dalam pengetahuannya. Oleh itu defendan pertama menghujah bahawa ia berhak ke atas pembelaan common law penyebaran ikhlas. Dua isu yang perlu dipertimbangkan dalam kes ialah sama ada kedua-dua perenggan memfitnah yang dirujuk oleh plaintif yang mencemar keperibadian dan nama baik sememangnya memfitnah, dan jika begitu, sama ada defendan-defendan berjaya menjelaskan beban pembuktian mereka untuk membuktikan pembelaan mereka masing-masing.

Diputuskan, membenarkan sebahagian tindakan plaintif dengan kos:

(1) Memandangkan tiada keterangan bercanggah di hadapan mahkamah berkaitan bantahan defendan-defendan terhadap terjemahan kedua-dua perenggan memfitnah tersebut dalam BM, mahkamah menerima terjemahan yang disahkan ke dalam BM yang dikemukakan oleh plaintif sebagai terjemahan yang betul dan terpakai (lihat perenggan 16).

(2) Tiada slanga, perkataan teknikal atau asing digunakan dalam kedua-dua perenggan yang memfitnah tersebut yang memerlukan keterangan ekstrinsik bagi mentafsir maksud memfitnah. Terjemahan ke dalam BM adalah tepat dan difahami bermaksud sebagai pernyataan yang menyinggung dalam bahasa Tamil. Dalam undang-undang, hanya sindiran sebenar yang mempunyai dua maksud, seperti yang dirujuk oleh plaintif, dikehendaki dinyatakan sebagai butiran dan dibuktikan dalam perbicaraan. Dalam kes ini, dalam tafsiran maksud alamiah dan biasa dan maksud yang disimpulkan atau maksud alamiah perkataan dan pernyataan dalam kedua-dua perenggan memfitnah dalam keseluruhannya mempunyai kecenderungan menjejaskan kedudukan, peribadi dan nama baik plaintif dan melibatkan namanya dalam skandal dan penghinaan. Walaupun kedua-dua perenggan memfitnah dipertimbangkan secara berasingan, perenggan tersebut cenderung untuk mencemar keperibadian dan nama baik plaintif. Walau apa pun,

berdasarkan autoriti yang telah dibuktikan, setiap satu daripada dua perenggan menghina tersebut harus dibaca secara keseluruhan dan sebagai satu bahan bacaan dan tidak perlu diasingkan dan diuji berasingan seperti yang dihujahkan oleh defendan-defendan. Oleh itu, membaca kedua-dua perenggan menghina tersebut sebagai satu bahan bacaan adalah lebih wajar dalam keadaan kes ini (lihat perenggan 34–35 & 39–41).

(3) Dua perenggan memfitnah yang diterbitkan tersebut tidak langsung berpunca daripada atau berkait dengan plaintif. Pernyataan tersebut tidak mengandungi temuramah atau kenyataan yang dibuat oleh plaintif sebagai asasnya. Maka, perkataan yang didakwa boleh memfitnah dan sememangnya memfitnah plaintif seperti yang diplidkan dalam penyataan tuntutannya (lihat perenggan 46 & 48).

(4) Walaupun penyunting IMN memberi keterangan bahawa sumber bahan yang diterbitkan mengenai plaintif dalam kedua-dua keluaran IMN tersebut adalah berdasarkan 'berita' yang penerbitannya tersebar di Tamil Nadu, tiada keterangan dokumentar kontemporari berikutan sumber bahan yang dikatakan dikemukakan ke mahkamah. Oleh itu, tiada pengesahan bebas dilakukan oleh pihak yang bertanggungjawab di IMN untuk memeriksa atau mengesahkan kebenaran pernyataan tentang plaintif yang terkandung dalam kedua-dua keluaran IMN sebelum diterbitkan. Maka, dua perenggan memfitnah tersebut dihantar untuk dicetak dan diterbitkan secara semberono dan niat jahat oleh defendan ketiga, tanpa mengambilkira kebenarannya (lihat perenggan 52–53).

(5) Adalah wajib bagi mana-mana defendan yang menggunapakai pembelaan justifikasi dalam tindakan fitnah bertulis untuk membuktikan bukan hanya kebenaran fakta-fakta yang memfitnah itu tetapi juga untuk menunjukkan bahawa fakta-fakta asas dan juga kesimpulan daripadanya adalah benar. Walau bagaimanapun, defendan kedua hingga keempat dalam kes ini bergantung kepada s 8 Akta Fitnah 1957 tetapi gagal menunjukkan bagaimana atau di mana 'substantial truth in some' dalam pernyataan yang didakwa oleh plaintif dalam tindakan ini telah dibuktikan dan kedua-dua proviso dalam seksyen tersebut yang ditunjukkan telah dibuktikan. Oleh sebab penghinaan di dalam pernyataan fitnah dalam kedua-dua perenggan memfitnah tersebut tidak dapat dibuktikan benar oleh defendan kedua hingga keempat, pembelaan justifikasi yang dibangkitkan gagal (lihat perenggan 55, 57–58).

(6) Percubaan defendan ketiga untuk melambat-lambatkan perkara berkaitan plaintif itu membangkitkan keterangan tentang merosakkan

nama baik dan tidak menyokong pembelaan justifikasi yang diplidkan oleh defendan kedua hingga keempat dalam jawapan kepada tuntutan fitnah bertulis plaintif (lihat perenggan 57).

(7) Defendan pertama menunjukkan bahawa ia tidak tahu atau mempunyai sebab untuk percaya bahawa ia menyumbang kepada penerbitan bahan memfitnah tersebut apabila ia mencetak kedua-dua keluaran IMN yang mengandungi dua perenggan memfitnah tersebut. Maka, defendan pertama tidak semberono atau cuai dalam mencetak kedua-dua keluaran IMN untuk defendan ketiga dan mempunyai pembelaan penyebaran ikhlas yang bagus (lihat perenggan 65).

(8) Ganti rugi dalam tindakan fitnah bertulis diberikan dan ditaksirkan atas dasar pampasan bagi perasaan yang terjejas dan ada ketikanya untuk memulihkan nama baik plaintif kepada umum. Dalam kes ini, karier plaintif tidak kelihatan terjejas atau mendapat kesan buruk akibat penerbitan bahan memfitnah tersebut. Juga terdapat keterangan yang tidak disangkal bahawa hanya 10,000 hingga 15,000 naskah majalah IMN yang dicetak setiap bulan dalam tahun 1998 dan hanya dijual di Malaysia kepada yang melanggan atau di kedai-kedai buku dengan beberapa naskah diedarkan ke luar negara. Oleh itu, dalam aturan biasa peristiwa, bolehlah disimpulkan bahawa pembaca IMN terhad kepada komuniti India yang meminati berita industri perfileman India. Maka, sejumlah RM70,000 diawardkan sebagai ganti rugi kepada plaintif dan tiada award untuk ganti rugi teladan dan ganti rugi teruk (lihat perenggan 67, 69–70, 73 & 74(a)).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 369–527.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142, HC (refd)
Allsop v Church of England Newspaper Ltd and others [1972] 2 QB 161, CA (refd)
Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315, HC (refd)
Capital and Counties Bank, Ltd, The v George Henty & Sons (1882) 7 App Cas 741, HL (refd)
Cassell & Co Ltd v Broome and another [1972] AC 1027, HL (refd)
Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)
CS Wu v Wang Look Fung & Ors [1981] 1 MLJ 178, CA (refd)
Emmens v Pottle and others (1885) 16 QBD 354, CA (refd)
Grubb v Bristol United Press Ltd [1963] 1 QB 309, CA (refd)
Hemming v Newton 2006 BCSC 1748, SC (refd)
Jones v Skelton [1963] 3 All ER 952, PC (refd)

A *Maynard v Port Publication Inc* 297 NW 2d 500 (1980), Wis (refd)
McPhersons Ltd v Hickie (1995) Aust Torts Reports 81–348, CA (refd)
Menear v Miguna (1996) 30 OR (3d) 602, SC (refd)
Menear v Miguna (1997) 33 OR (3d) 223, CA (refd)
Misut v Mooney 475 NYS 2d 233 (1984), NY SC (refd)
B *Plato Films Ltd and others v Speidel* [1961] 1 All ER 876, HL (refd)
R Murugason v The Straits Times Press (1975) Ltd [1984] 2 MLJ 10, HC (refd)
Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors [1999] 3 MLJ 529; [1999] 8 CLJ 499, HC (refd)
Rubber Improvement Ltd v Daily Telegraph Ltd and another appeal [1964] AC
C 234, HL (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173; [1988] 1 CLJ (Rep) 233, SC (refd)
Sun Life Assurance Co of Canada v WH Smith & Sons, Ltd [1933] All ER Rep 432, CA (refd)
D *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56, HC (refd)
Tan Chong & Sons Motor Co Sdn Bhd v Borneo Motors (M) Sdn Bhd & Anor [2001] 3 MLJ 140; [2001] 4 CLJ 296, HC (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1
E MLJ 393, HC (folld)
Utusan Melayu (M) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor [2005] 2 MLJ 397; [2005] 1 CLJ 71, CA (refd)
Vizetelly v Mudie's Select Library, Limited [1900] 2 QB 170, CA (refd)

F **Legislation referred to**
Defamation Act 1957 ss 7, 8
Defamation Act 1996 [UK] s 1
Rules of the High Court 1980 O 78 r 3(1)

G *M Manoharan (M Manoharan & Co) for the plaintiff.*
Andrew Chew (Ivan Ong with him) (Lee Hishamuddin Allen & Gledhill) for the first defendant.
Canthius Leo (C Leo Camoens) for the second defendant.

Varghese George JC:

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[1] This is an action brought by the plaintiff against the defendants for damages in libel. The parties at the trial ie after the consolidation of the two suits are as follows:

I

Yuvarani w/o Ravindra — Plaintiff

v

1. Percetakan Kum Sdn Bhd — First defendant.

2. Mentakab Agency (M) Sdn Bhd — Second defendant.

3. Indian Movie News Publications (M) Sdn Bhd — Third defendant.

4. Indian Movie News Publications P/L — Fourth defendant.

[2] The plaintiff describes herself in the statement of claim as a well known and successful actress in India who had been active in films in various South Indian languages since 1991.

[3] The *first defendant* is a printer who was contracted by the third defendant to print the monthly issues of a magazine called Indian Movie News ('IMN').

[4] The *second defendant* is the distributor of IMN in Peninsular Malaysia.

[5] The *third defendant* is the publisher of IMN and have been in that business for over thirty years.

[6] The *fourth defendant* is the distributor of IMN in Singapore.

PLEADINGS

[7] The plaintiff's case is that she has been defamed by materials printed and published in Tamil language by the defendants in two issues of IMN namely the April 1998 and August 1998 issues. The plaintiff alleges that said materials published were false (*palsu*) and done with malicious intent (*dengan niat jahat*). Further, it is averred that by printing and distributing the said issues of the monthly magazine, the defendants were responsible for the publication of the allegedly offending material not just amongst readers of IMN but for its republication, which was ordinarily likely, of the said offending contents amongst the general public.

[8] The plaintiff complains that as a result of the said publication and likely republication she has been injured in her standing as a film and drama actress and her character and reputation has been brought into odium and contempt.

[9] The first defendant's defence, whilst not admitting that the material in the two articles were defamatory of the plaintiff as alleged by the plaintiff, is essentially that they were only the printers of the magazine (not the writer,

editor or publisher) and that they should not be imputed with any direct knowledge of the defamatory contents of the said material. The first defendant further denies any malicious intent behind the publication of the alleged offending material in the event of it being held that the alleged statements are indeed defamatory of the plaintiff and have been published by the first defendant.

[10] The common thread in the defence filed by the other defendants (the second, third and fourth defendants) to the claim are that:

(a) the translation into Bahasa Malaysia of the words in the material complained were not accurate as pleaded in the statement of claim by the plaintiff;

(b) the words in the statements complained of were not capable of the meaning attributed or imputed to those statements by the plaintiff; and

(c) the words in the material complained of, were true (a statement of fact) and were not published with any malicious intent ('defence of justification'); the said defendants also set out by way of 'particulars' at para 8 of their respective statements of defence the specific statements claimed by the said defendants to be 'true'.

[11] The third and fourth defendants (at para 11 of their statement of defence) further asserts that the material published were not false in respect of the plaintiff and if read objectively, it was written in sympathy with the plaintiff, who they claim as it would appear, had been cheated by some other person or persons of her earnings (… tidak apa-apa yang palsu disiarkan mengenai plaintif... artikel tersebut ditulis dengan perasaan kesian terhadap plaintif yang telah ditipu).

TRANSLATION

[12] As noted above, the material complained of by the plaintiff as being defamatory of her were in *Tamil language* in the April 1998 and August 1998 issues of IMN. The relevant passages which specifically referred to Yuvarani ('the plaintiff') formed part of a longer article found in each of the said issues of the IMN. Those passages were translated into Bahasa Malaysia (the language of the court) and are set out fully in the statement of claim. The translations were made by *PW2*, a certified translator attached to the High Court.

[13] The passage that appears at p 70 of the April 1998 issue of IMN was admitted into evidence as *exh P1* and the translation into Bahasa Malaysia was admitted as *exh P4*. The said exh *P4* is reproduced here below:

"Masalah

Gambar Yuvarani
Vineeth dan
2 orang lain

Yuvarani yang telah menghilangkan diri bersama Vineeth
Vineeth dengan Yuvarani pengambaran terakhir beliau 'Sakthi'

Pelakon wanita Yuvarani di katakan menjalankan suatu perniagaan yang penting di Mumbai dan agar beliau tidak dikenali oleh sesiapapun, telah bergaya rambut secara luar biasa, berpakaian baju dan seluar dimana adalah dikatakan perbezaan yang menyeluruh didapati pada diri beliau.

PENTERJEMAHAN DIAKUI SAH
Di Terjemahkan Oleh

t.t.

.....
(S. VANMATHI)
Jurubahasa Bersijil,
Mahkamah Tinggi,
Kuala Lumpur. "

[14] The passage that appears at p 108 of the August 1998 issues of IMN was admitted into evidence as *exh P2* and the translation into Bahasa Malaysia was admitted as *exh P3*. The said exh *P3* is reproduced here bellow:

"I.M.N.
TAHUN KE 47

REMEH-TEMEH

Yuvarani

Gambar Yuvarani

Pelakon yang menghilangkan diri Yuvarani

Ingatkah anda yang terdapat seorang pelakon wanita yang bernama Yuvarani? Dialah wanita yang pernah digoda dan dipikat oleh Vicknesh. Seperti kebiasaan pelakon wanita lain beliau juga di lamun cinta dengan seorang Ahli Koprat Tamil Naidu yang berada di Amerika Syarikat.

Lelaki tersebut sering ke sini, menetap di rumahnya dan bersukaria bersama berhasrat berkahwin dengan lelaki tersebut dan ingin menjadi Pengarah urusan Industri kononnya di Los Angeles.

Oleh itu beliau telah meninggalkan dunia perfileman. Beliau berbincang tentang perkahwinan. Selepas perbincangan tersebut, lelaki yang selama ini berfoya-foya menjadi terganggu.

Lelaki tersebut berkata, jika perkahwinan diadakan di sini adalah sukar untuk mendapatkan visa, dan sekiranya perkahwinan di langsungkan di Amerika adalah mudah untuk terus bermaustatin di situ. Saya berlepas dahulu ke Amerika dan akan membuat segala persiapan. Selepas menerima kahabar dari saya kamu boleh berangkat ke situ (Amerika). Selepas meluahkan kata-kata ini, lelaki itu telah pergi dengan sejumlah wang yang lumayan yang diterima daripada Yuvarani.

Tiada khabar langsung tentang lelaki tersebut selepas pemergiannya. Wang hasil titik peluh dari berbagai sumber hilang begitu sahaja. Sekarang, beliau dalam keadaan bersusah payah mencari pendapatan.

PENTERJEMAHAN DIAKUI SAH
Di Terjemahkan Oleh
t.t.
.....
(S. VANMATHI)
Jurubahasa Bersijil,
Mahkamah Tinggi,
Kuala Lumpur. "

[15] At the trial, all the defendants however took serious issue with the translations from Tamil to Bahasa Malaysia done by PW2. This witness, who

was subjected to extensive cross-examination on her choices of some terminology/words in Bahasa Malaysia, maintained that her translations (P4 and P3) were accurate and reflected the original contents of the material in Tamil.

[16] It must be highlighted that on their part, the defendants however did not call any witness nor did they adduce for purposes of comparison any alternative or other certified translation into Bahasa Malaysia (or for that matter into English) of the subject passages which referred to the plaintiff in P1 and P2. This needless to say was essential, if it was intended at all by the defendants to discredit the correctness of the translation (P4 and P3) done by PW2. In the absence of any such contradictory evidence before me, this court accepts P4 and P3 as the proper and applicable translations into Bahasa Malaysia of the alleged defamatory material in P1 and P2.

[17] It is also of significance to register here the fact that each of the said pages — *P1* and *P2* where the passages which had reference to the plaintiff were published (ie in the April and August 1998 issues of IMN), prominently displayed on the top of both the said pages a photograph of the plaintiff as well. Undoubtedly, the use of photographs bearing the image of the plaintiff in this manner, was obviously calculated to attract the attention of the readers to that article and the material therein on Yuvarani (although as observed earlier not all of the contents of the article referred to the plaintiff). In P1 the photograph is a snap shot of a scene from the film 'Sakthi' in which another actor (Vineeth) is also seen (with two other minor actors/actresses in the background). There is no doubt that the focus of the photograph is the plaintiff. In that scene the plaintiff is captured acting out a seductive role in that film. The photograph in P2 was a posed shot of the plaintiff by herself and below which were found the alleged offending material on the plaintiff.

[18] It has been established by a long list of authorities that in a libel action the burden of proof lies initially on the plaintiff to show that:

(a) the words are defamatory;

(b) the words refer to the plaintiff; and

(c) the words were published.

(See *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315).

[19] In this instant case there is *no dispute* between the parties that:

(a) the material/statements complained of by the plaintiff did in fact refer to the plaintiff; and

(b) there had been due publication of the said material/statements sufficient to ground an action in libel.

Hence, the issues for determination before this court principally are whether the statements alleged by the plaintiff to have disparaged her in her character and reputation are indeed defamatory of her and if so, then whether the defendants have on the evidence and submissions before this court, successfully discharged the burden on them to establish their respective pleaded defences.

[20] It must be registered at this point that this court is satisfied on the evidence before the court that the *plaintiff* was and continues to be a recognised actor of some standing in films and serials produced in South India. The very fact 'news' about the plaintiff found place or prominence in the IMN, admittedly a magazine on developments in the Indian film scene and on personalities or celebrities directly related to that entertainment industry, bears proof that the plaintiff is a personality recognised and accepted in the Tamil/Indian film world as aforementioned. She is now married to a Malaysian and has a place of residence in Malaysia since 1998.

STATEMENTS/WORDS — WHETHER CAPABLE OF OR HAVING A TENDENCY OF BEARING A DEFAMATORY MEANING

[21] The Court of Appeal in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461 (per Gopal Sri Ram JCA, as His Lordship then was) laid down the steps to be adhered to by a trial court in a defamation proceedings. It is stated as follows:

> It cannot, I think, be doubted that the first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published.
>
> ...
>
> Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the enquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case.

[22] As often held by the courts, a statement capable of being defamatory is one which has *a tendency* to injure the reputation of the person, that is to say, to lower him (or her) in the estimation of right thinking members of society generally (amongst other effects). *Gatley on Libel and Slander*, (11th Ed) at p 12 para 1.8 further states:

> The question 'what is defamatory?' relates to the nature of the statement made by the defendant: words may be defamatory even if they are believed by no one …

[23] In *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56, Mohamed Azmi J (as His Lordship then was) in reiterating this principle stated: A

> Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right thinking members of society generally. B

[24] Further, in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, Richard Malanjum J (as His Lordship then was) on the issue of construing words complained of, had this to say: C

> It is not confined to strict literal meanings of the words complained of, but extends to any reference or implication from which persons can reasonably draw. Further, the words complained of must be considered as a whole, bearing in mind, inter alia, the context in which they were used. D

[25] Richard Malanjum J in the aforesaid case also made reference to the observation of Lord Selborne LC in *The Capital and Counties Bank, Ltd v George Henty & Sons* (1882) 7 App Cas 741 (at p 745) which was as follows: E

> The test according to authorities is whether, under the circumstances in which the writing was published, a reasonable man to whom the publication was made would be likely to understand it in a libelous sense. F

[26] It is also established in law that in construing words published in an article, the whole article is to be considered when determining whether the words complained of contain any defamatory imputation. RK Nathan J in *Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors* [1999] 3 MLJ 529; [1999] 8 CLJ 499 observed as follows: G

> It was argued by the defendants that the plaintiffs had not identified the specific words or sentences that are defamatory of them. To my mind the law of defamation would remain impotent if the court were to put such a narrow and simplistic interpretation. Not only words and sentences can be defamatory, it is also possible, after reading the entire article, to hold that the said article read as a whole is defamatory of the plaintiff because of the claim of events entwined throughout the article, to form a tapestry, that portrayed the plaintiffs as the ones defamed. H I

[27] Both counsel for the first defendant and counsel for the second to fourth defendants in their next line of attack (the first being on the issue of the translation of P1 and P2 into Bahasa Malaysia as above) contended that the

material referring to the plaintiff in P1 and P2 were not capable nor did it have the tendency of bearing the defamatory meaning as pleaded in the statement of claim.

[28] It is also their further or alternative argument that the plaintiff has failed to prove the *innuendos* pleaded and set out as particulars in the statement of claim. They submit that this can only be done by producing evidence of extrinsic facts to establish the innuendo, namely, to understand the statement in a defamatory sense. Since the plaintiff has not produced any extrinsic evidence 'to understand the statement(s) in a defamatory sense', they both seek that this action should therefore be dismissed outright.

[29] In the statement of claim (at paras 8–9) after having set out the statements complained of in P1 and P2 both in the original Tamil language and in the translations in Bahasa Malaysia (P4 and P3), the plaintiff goes on to treat them collectively and sets down their cumulative effect and meaning allegedly bearing out their tendency to be defamatory of the plaintiff. This is found in the following paras 10–11 of the statement of claim as follows:

> 10. Perkataan-perkataan yang diadukan di dalam perenggan-perenggan 8 dan 9 di atas ini di dalam maksud yang biasa dan semulajadi, bermaksud dan difahamkan memberi maksud bahawa:
>
> (a) Plaintif bergiat dalam bidang pelacuran di Bombay, India;
>
> (b) Plaintif adalah tidak bermoral;
>
> (c) Plaintif telah melepaskan adat resam, kebudayaan dan kepercayaan orang Tamil;
>
> (d) Plaintif telah menukar ke sikap Negara Barat;
>
> (e) Plaintif bercinta dengan seorang bernama Vicknes;
>
> (f) Plaintif gilakan lelaki;
>
> (g) Plaintif gilakan jawatan korporat dan telah meninggalkan dunia perfileman;
>
> (h) Plaintif gilakan orang Amerika;
>
> (i) Plaintif telah dianiaya, diseksa dan ditipu oleh seorang lelaki Amerika dengan sejumlah wang yang lumayan;
>
> (j) Plaintif telah hilang wang hasil titik peluh dari pelbagai sumber;
>
> (k) Plaintif adalah dalam keadaan bersusah payah mencari pendapatan; dan
>
> (l) Plaintif adalah seorang yang telah menghilangkan diri.
>
> 11. Selanjutnya atau secara alternatif perkataan-perkataan yang diadukan tersebut di dalam perenggan-perenggan 8 dan 9 di atas di sini melalui kiasan (*innuendo*) melahirkan maksud yang dinyatakan di dalam perenggan 10 di atas ini dan selanjutnya menyiratkan (*imputes*) seperti berikut:

(a) Plaintif adalah seorang yang tidak bermaruah;

(b) Plaintif adalah seorang yang telah hilang taraf kewanitaannya;

(c) Plaintif adalah seorang yang sedang menyorokkan diri;

(d) Plaintif adalah seorang yang gilakan lelaki dan seks;

(e) Plaintif adalah seorang yang dihina, dipandang rendah dan harus dikutuk;

(f) Plaintif adalah seorang yang tidak berfikiran langsung; dan

(g) Plaintif seorang yang hilang segala-galanya termasuk wang ringgit.

BUTIR-BUTIR MENURUT ATURAN 78, KAEDAH 3(1) KAEDAH-KAEDAH MAHKAMAH TINGGI, 1980

(1) Plaintif adalah seorang pelakon filem dan drama yang terkenal di Malaysia, Singapura, India, Arab Saudi, Dubai dan lain-lain Negara;

(2) Defendan-defendan sentiasa dari dahulu lagi menyiarkan perkara-perkara karut, remen-temeh, cakap kosong dan sebagainya ke atas ramai pelakon-pelakon di India termasuk Plaintif;

(3) Plaintif tidak pernah gilakan lelaki Amerika dan tidak pernah hilang wang ringgitnya;

(4) Plaintif tidak pernah menghilangkan diri;

(5) Plaintif tidak pernah langsung terlibat dan/atau melibatkan diri dalam apa jua kegiatan yang tidak bermoral tidak bermaruah, dan bertentangan dengan adat-resam kebudayaan India;

(6) Plaintif tidak pernah langsung terlibat dalam apa-apa perniagaan penting termasuk pelacuran;

(7) Defendan-defendan hanya mementingkan keuntungan wang ringgit hasil penjualan IMN tersebut; dan

(8) Plaintif tidak pernah meninggalkan dunia perfileman.

[30] The plaintiff's case based on the above is that the words complained of are defamatory in their ordinary and natural meaning for all intents and purposes (para 10). Paragraph 11 of the statement of claim states that it is 'further or in the alternative' to the matters complained of in paras 8 and 9 of the statement of claim, the alleged offending words also bear meanings by way of 'innuendo' (imputation) as set out in the said para 11(a)–(g). As expressly stated in para 11 this (imputation or innuendo) is an extension of the ordinary and natural meaning as enumerated in para 10 of the statement of claim.

[31] This type of innuendo has been described in law books as a *false innuendo* and it arise from the alleged offending statements or could arise from even a combination of statements and picture (*CS Wu v Wang Look Fung & Ors* [1981] 1 MLJ 178). A 'false' innuendo should be contrasted with or distinguished from a 'true' or 'legal' innuendo that is statements with a

secondary meaning. It is only in the latter case of a 'true' innuendo/secondary meaning that they have to be specifically pleaded and proved at trial by extrinsic evidence (Mohamed Azmi J in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor*).

[32] Strictly when the words are defamatory in their natural and ordinary meaning, there is no need to plead an innuendo; only the defamatory meaning need be pleaded. The commentary in *Malaysian Court Practice: High Court* (LexisNexis) on O 78 r 3(1) of the Rules of the High Court 1980 confirms that only a 'true' innuendo need be specifically pleaded and subsequently proved at the trial by extrinsic evidence as to the special meaning the words bear. The commentary cited above further notes, quoting the judgment of Holroyd Pearce LJ in *Grubb v Bristol United Press Ltd* [1963] 1 QB 309 and cited by Chua J in *R Murugason v The Straits Times Press (1975) Ltd* [1984] 2 MLJ 10 at p 14, as follows:

> Although it is not done in practice, I see nothing to prevent the plaintiff, if he chooses, from pleading what he contends to be the ordinary meaning of the words, either in a case where it is doubtful whether a defamatory inference is within the ordinary meaning or even where the words are plainly defamatory. He would merely be providing the defendant with the nature of his case on that point.
>
> ...
>
> If, even at that stage, the plaintiff made it clear that he was alleging no extension of meaning but only the ordinary meaning, the order would not apply and the plea would not be struck out for lack of particulars.

[33] This proposition is also supported by the decision in *Allsop v Church of England Newspaper Ltd and others* [1972] 2 QB 161 cited by the plaintiff's counsel in his submissions in reply.

[34] I therefore reject the submissions made by counsel for the second, third and fourth defendants in his written submissions in reply that I should pursuant to O 78 r 3(1) of the RHC 1980 hold that the plaintiff has failed to fully plead particulars of innuendos relied on and secondly, that the plaintiff had not lead any evidence on the pleaded innuendo to show its meaning as claimed by the plaintiff. There are no 'slang, or technical or foreign' words involved here that require extrinsic evidence to derive its defamatory meaning. The translations into Bahasa Malaysia are direct and comprehensible of the meaning of the offending statements in Tamil. As observed above, the defendants did not lead any evidence to show the translations did not bear the meaning as translated into Bahasa Malaysia (P4 and P3).

[35] In law therefore, only a 'true' innuendo with a secondary meaning (relied on by the plaintiff) is required to be set out as particulars and proved at

trial; not a 'false' innuendo which is an extension of the ordinary and natural meaning of the alleged offending words.

[36] In *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* referred above, Gopal Sri Ram JCA citing with approval Lord Morris in *Jones v Skelton* [1963] 3 All ER 952, noted that *the ordinary and natural meaning of words* may be either the literal meaning or it may be an implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of words. Gopal Sri Ram JCA went on to say:

> In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motive or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[37] Lord Reid in *Rubber Improvement Ltd v Daily Telegraph Ltd and another appeal* [1964] AC 234 (quoted with approval by Mohamed Azmi J in *Syed Husin Ali*'s case) said:

> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.

[38] With the assistance of the above guiding principles I have examined the statements alleged by the plaintiff to be defamatory of her in P1 (as translated and set out in P4) and in P2 (as translated and set out in P3). I have also examined them separately that is, the passages in the articles appearing in each issue which made reference to the plaintiff. I have read the respective passages in its entirety (that is as a whole) as it appeared in the separate articles. I have also considered them collectively together, that is P1 and P2 together. I have tested the words and statements in P1 and P2 objectively as against the contents of paras 10 and 11 (ordinary and natural meaning of the words) of the statement of claim.

[39] I find that in their natural and ordinary meaning and by way of inferred or indirect meaning ('false' innuendo) the statements published by the defendants in P1 and P2 taken together did have the tendency to injure the plaintiff in her standing, character and reputation and to bring her name into

scandal and contempt. Even if P1 and P2 are considered separately, I find that the statements in them, exclusive of each other, would have the same tendency of casting a slur on the plaintiff's character and reputation.

[40] I do not accept the contention of counsel for the second, third and fourth defendants that each of the several statements in the two passages which referred to the plaintiff, should be isolated from each other and tested individually to see whether they were capable of bearing or had a tendency of being defamatory as pleaded. Based on established authority (see RK Nathan J in *Ratus Mesra*'s case above), each of the said passages no doubt are to be read in its entirety and as a whole piece.

[41] In the particular scenario of this case, there are also good and sufficient reasons to read both the passages in the two articles together (in its entirety too) to derive the defamatory effect or its meaning as aforesaid. In P2 (translated — P3) the heading (of the article) and the first sentence (of the passage directly referring to the plaintiff) reads:

> Pelakon yang menghilangkan diri Yuvarani.
>
> Ingatkah anda yang terdapat seorang pelakon wanita yang bernama Yuvarani?

In P1 (translated — P4), the heading (the earlier of the two articles) reads:

> Yuvarani yang telah menghilangkan diri ...

What is clearly obvious here is the interconnectedness between both the alleged offending materials in P1 and P2 which commonly makes reference to a 'missing' plaintiff. Reading them together that is, as one piece, is therefore also in the view of this court, more than justifiable in the particular circumstances of this case.

[42] I however accept that the heading of the article in P1 (translated — P4), namely — *Yuvarani yang telah menghilangkan diri bersama Vineeth* — just below the photograph of the plaintiff with Vineeth in the scene from the film 'Shakthi', as contended by counsel for the first defendant, could well mean that the plaintiff and Vineeth together (with each other) in the film scene and not that the plaintiff has gone missing or eloped with Vineeth. Nevertheless, that is only one sentence in the several statements complained of and does not detract from the defamatory sting discernable in the ordinary and natural meaning of words found in the rest of the passages in the two articles where reference is made to the plaintiff.

[43] Upon a construction of words and statements in P1 (translated — P4) and P2 (translated — P3) in its entirety as explained above, I hold that the sting of the defamatory nature of the several statements can be clearly discerned and

are manifested as is set out hereunder amongst others:

(a) the theme in both articles seems to be that the plaintiff has gone 'missing' or is 'hiding' herself and that she has left the world of films;

(b) the plaintiff has disguised herself and is conducting herself in a clandestine manner;

(c) the plaintiff was in Mumbai (when the Tamil film capital is Chennai/Madras) engaged in some unmentionable 'important' business, implying some surreptitious activity on her part there;

(d) coupled with (c) above, the plaintiff was sporting a out-of-the-ordinary hair style and wearing shirt and trousers (pants), suggesting that she has abandoned Indian traditional dressing and mores for western styles;

(e) the plaintiff was previously linked to one Vicknesh but now she is in a romantic entanglement with a Tamil corporate figure who resides in USA (the term 'American' is specifically repeated twice in P2 and therefore could not be a mistake for a 'Malaysian' — her eventual husband as contended by counsel for the second, third and fourth defendants);

(f) the plaintiff was inclined to abandon her Indian roots and is desirous of marrying and settling in Los Angeles, USA with a position as managing director of a company owned by the 'American' businessman there;

(g) the American had promised plaintiff marriage and taken significant sum of money from the plaintiff, implying that the plaintiff was desperate to leave her film career for a life in America;

(h) the American has been staying in the plaintiff's house when he was in Madras and they have been having fun time together, suggesting that the plaintiff was of loose morals;

(i) there has been no news from the American for some time now and she has been cheated of her hard earned money, implying that she was not able to take care of herself and her affairs; and

(j) the plaintiff is in financial difficulties and need to search for other income, implying that she would do anything now to earn for a living.

[44] The aforesaid effect or tendency can be deduced from the ordinary and natural meaning of the words and does not depend on knowledge of special facts either extrinsic to the words themselves or relating to any special meaning the words bear. Definitely also, a defamatory imputation can arise by leaving words or descriptions vague or unexplained (eg '… undertaking an important business in Mumbai … menjalan suatu perniagaan yang penting di Mumbai …') especially when it relates to a lady.

It becomes more damaging to the reputation of person like the plaintiff, when

such a statement is read together with the last paragraph of P2 which is to the effect that the plaintiff has been cheated of her hard earned monies as an actress and was in a state when she has to now endure hardship to earn an income for herself.

[45] Therefore, there is no doubt in my mind that in the context of the occasion and medium of publication involved in this case (namely, a monthly magazine disseminating current news and developments in the Indian/Tamil movie world) the statements taken separately or together, satisfied the test of having a tendency to portray the plaintiff negatively ('excite against the plaintiff adverse opinion of others' as stated earlier above) amongst its readers and others interested in the personal affairs of stars in Tamil movies and serials.

[46] I also need to make a note here that the materials published of the plaintiff in P1 and P2 did not originate in any form from or is attributable to the plaintiff at all. Those statements or reports did not have as its foundation some interview given or statement made in the first place by the plaintiff.

[47] There is also no escape from the serious implications of such statements merely by the third defendant giving vague and innocuous captions to the articles like 'masalah' (problems — in English) or 'remeh temeh' (frivolous — in English) respectively, and including the alleged offending material on the plaintiff within those articles.

[48] It is my finding in law therefore that the words complained of were capable of and were in fact defamatory of the plaintiff materially in the way or to the effect pleaded in the statement of claim.

DEFENCE — THE SECOND, THIRD AND FOURTH DEFENDANTS: JUSTIFICATION

[49] As noted earlier in this judgment, the defence of the second, third and fourth defendants is that the statements complained of by the plaintiff were indeed true as a fact (para 12 of the respective statement of defence). This defence of justification was repeated in the written submissions of their counsel.

[50] In *Gatley on Libel and Slander*, (11th Ed) at p 1002 para 29.5 it is stated that:

> A pleader should not put a plea of justification on the record lightly or without careful consideration. Before pleading justification, a defendant should:
>
> (1) believe that the words complained of (in some defamatory meaning they are reasonably capable of bearing) are true;

(2) intend to support the defence at trial; and

(3) have reasonable evidence to support the plea or reasonable grounds to suppose that sufficient evidence to prove the allegation will be available at trial.

The defendant has to prove the precise truth of all the material defamatory statements of fact or that they were substantially true. The Supreme Court (then) in *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; [1988] 1 CLJ (Rep) 233 per Wan Hamzah SCJ stated the law when justification is raised as a defence in a libel action as follows:

> The burden lies upon the defendant to establish justification. The burden does not lie on the plaintiff to prove the defamatory words are false, because the law presumes this in his favour: *Belts v Lawes* (1882) 51 LJQB 359 at p 361. To establish justification the defendant must prove that the defamatory imputation is true. It is not enough for him to prove that he believes that the imputation was true.

[51] Where the action for libel is brought in respect of words containing two or more distinct charges against the plaintiff, the defence of justification does not fail by reason only that the truth of every charge is not proved, *if the words not proved to be true do not materially injure the plaintiff's reputation* and that too *having regard to the truth of the remaining charges* (s 8 of the Defamation Act 1957 (Act 286); *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142). Firstly, therefore if the defendants are to have any benefit of this statutory exception, the words which have not been proved should not materially injure the plaintiff's reputation and secondly, the remaining charges must still be proved to be true.

[52] Only DW2, the editor of the IMN, was called to give evidence for the second, third and fourth defendants. This witness's testimony was that the source of the materials published about the plaintiff in the two issues was the magazines's reporter or correspondent or journalist in India and apparently was in turn based on 'news' widely published in Tamil Nadu. The witness however did not know the name of newspapers or magazines in India that allegedly carried that material about the plaintiff. No contemporaneous documentary evidence of such alleged source material or any communication with the alleged correspondent or reporter (claimed to have since died) of the IMN on this subject or on any other material fed to IMN by this so called correspondent around that time was placed before the court. Much less was there any evidence as to the truth of the defamatory material adduced in court to prove the defence of justification.

[53] It is obvious to this court that there was no form of independent verification undertaken by those responsible at IMN to check or confirm the truth of the statements on the plaintiff contained in the two issues of IMN

prior to it being published. To that extent the materials were by the third defendant sent for printing and publication recklessly and maliciously without regard to and any concern for its truth. Any prudent publisher subsequently upon becoming aware of an action of this nature against them (2003 — when the writ was filed) and that too when confidently setting about a plea of justification as a defence to such action, ought to have taken immediate and reasonable steps to marshal all necessary evidence and supporting documents. It cannot be gainsaid that because the writ was only filed some five years after the date of publication (1998), the defendants had lost an opportunity to get the evidence required.

[54] Quite candidly in his written submissions, counsel for the second, third and fourth defendants now admit in respect of statements in P2 (translated — P3) that:

> It has now been proven that in some particulars the article is wrong:
>
> a. the statement about there being a Tamil corporate figure from America in her life;
>
> b. that she wanted to marry that person;
>
> c. that she wanted to become the managing director of that corporate person's business;
>
> d. that she has been cheated and forced to work hard to restore her finances.

(Counsel, to be fair to him, goes on to however contend that such untrue statements (although counsel terms them mildly as 'wrong' or 'incorrect') did not have the defamatory effect on the plaintiff's reputation as set out in this action).

[55] Counsel for the second, third and fourth defendants, next relying on s 8 of the Defamation Act 1957, I believe, argues further in his written submission that '… if there is substantial truth in some of the charges against the plaintiff while other defamatory imputations are not true, then the defence of justification succeeds and the plaintiff's case must be dismissed'. Counsel however fails to show how or where the 'substantial truth in some' of the charges or statements complained of by the plaintiff in this action has been established.

There is a world of difference between an 'American' businessman or of the plaintiff settling down in America specifically in Los Angeles and the eventual fact of the plaintiff marrying a Malaysian-Tamil and settling in Malaysia. This cannot by any stretch of imagination be said to be substantial proof of the 'truth' of the statement as argued for by counsel for the second, third and fourth defendants. Also there was no evidence at all produced to the effect that the plaintiff was in fact in Mumbai engaged in some legitimate business and had disguised herself in fact in the manner stated in P1 (translated—P4).

[56] I have already commented above when s 8 may be invoked in favour of the defendants, if at all, namely, only if the words not proved to be true (a) do not materially injure the plaintiff's reputation; and (b) having regard to the truth of the remaining charges. I must reiterate that such is not the situation here and both the provisos there have not been shown to have been satisfied.

[57] It is incumbent on any defendant relying on the defence of justification in a libel action to establish not only the truth of the defamatory facts alleged but also that the basic facts and the inferences arising therefrom are both true. General charges, general conclusions or irrelevant specific instances of wrongdoing are removed from the consideration in finding whether the defendants have succeeded in establishing the defence of justification (per Richard Malanjum J in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors*).

Hence, the attempt to drag in circumstances related to her relationship with a Malaysian businessman, her marriage to this person in 1996, the divorce proceedings where the plaintiff was named as a third party and the suggestion the plaintiff had committed adultery or she left India to settle in Malaysia are in my view irrelevant, general in nature and not acceptable. I hold that such extraneous matters do not assist or advance the defence of justification pleaded in this action by the second, third and fourth defendants. These facts on a sector of life of the plaintiff as above, extracted during cross-examination of the plaintiff, could perhaps be a relevant and admissible consideration in mitigation of damages that too only if it amounted to evidence of bad general reputation but in any case not if it is a specific instance of misconduct (see *Plato Films Ltd and others v Speidel* [1961] 1 All ER 876). Such evidence therefore does not support the defence of justification pleaded by the second, third and fourth defendants in response to the libel claim of the plaintiff.

[58] I have examined in detail the evidence before this court, and find that the second, third and fourth defendants have not by any credible evidence established on a balance of probabilities the truth of the material statements in the words complained of by the plaintiff. The sting of the defamatory statements in P1 and P2 has not been shown by these three defendants as being true as a matter of fact or in substance at all. Accordingly I hold that the defence of justification raised by the second, third and fourth defendants fail in this case.

DEFENCE — THE FIRST DEFENDANT: INNOCENT DISSEMINATION

[59] Counsel for the first defendant (the contract printer of the two issues of the IMN) argues that the first defendant is entitled to the common law defence of 'innocent dissemination'. This, it is argued, is based on the evidence of the

first defendant through DW1 that the first defendant had no control over or the means to edit the contents of materials published in the issues of the IMN. As contract printers they say that they were handed the contents of each issue (already set up for printing) and had to produce the printed copies within a fairly tight deadline. They further contend that their involvement was restricted to the mechanical process of printing, binding and packing of the magazines and where after it was collected for distribution by some other on behalf of IMN. Further it was DW2's testimony that the contents or implications thereof, particularly here where the subject material was in Tamil language, was not within their knowledge at all.

The submission of counsel for the first defendant, as I understand it, is that the *defence of innocent dissemination* as known in common law on the authority of the observations of the Court of Appeal in *Vizetelly v Mudie's Select Library, Limited* [1900] 2 QB 170 (CA) (where an earlier case, *Emmens v Pottle and others* (1885) 16 QBD 354 was discussed as the basis for this common law defence) per Romer LJ and in *Sun Life Assurance Co of Canada v WH Smith & Sons, Ltd* [1933] All ER Rep 432 per Scrutton LJ, *should be extended* and be available in this age and time, *to a contract printer* like the first defendant. Similarly circumstanced persons like the first defendant do not contribute towards or are a party to the contents of the printed material or a distributor of the same. Counsel concedes that the observations of the learned judges in those cases cited by him had limited the said defence of innocent dissemination to 'subordinate distributors' and such defence did not extend to 'printers' per se. He however makes a persuasive case to include 'printers' in the category of persons entitled to this defence since as he says the real test to be applied, as was summarised by Scrutton LJ in the *Sun Life Assurance*'s case, was 'whether the party involved knew or ought to have known that the material was defamatory or likely to be defamatory'. The key element, as I would put it, therefore was whether a defendant in such a situation possessed active or constructive knowledge that the material to be printed was or was likely to be defamatory of someone.

[60] In further support of his contention that this head of defence should be extended to 'printers' like the first defendant, counsel draws the attention of this court to judicial pronouncements and decisions in other Commonwealth jurisdictions *McPhersons Ltd v Hickie* (1995) Aust Torts Reports 81–348, New South Wales Court of Appeal, Australia; *Menear v Miguna* (1996) 30 OR (3d) 602; (1997) 33 OR (3d) 223, Ontario Supreme Court and Court of Appeal in turn, Canada; and *Hemming v Newton* 2006 BCSC 1748, British Columbia Supreme Court, Canada and in two recent American decisions, *Maynard v Port Publication Inc* 297 NW 2d 500 (1980) (Wis) and *Misut v Mooney* 475 NYS 2d 233 (1984) (NY SC), where in the light of changing and current technology in

the printing processes, the courts have moved on to recognise and hold that a 'printer' could also avail of this defence of 'innocent dissemination', whose source was in common law.

[61] I also note that today by s 1 of the Defamation Act 1996 of the United Kingdom (the current legislation there) a similar defence could by implication be now open there to a printer (not being the author, editor or publisher of the statement complained of). See *Gatley on Libel and Slander*, (11th Ed) at pp 185–188 paras 6.20–6.23.

[62] What then is the *position in law here* on this point? There is no doubt that the common law defence of 'innocent dissemination' — in so far as it is open to 'subordinate distributors' — is part of our law. Is there anything then in our law that precludes such a defence being extended to 'printers' like the first defendant in this case, as argued for by counsel for the first defendant?

[63] In s 7 of our Defamation Act 1957 there is however found a statutory provision dealing with 'unintentional defamation' or defamatory words 'innocently published'. That provision sets out how a person who published defamatory material unintentionally or innocently could minimise or exculpate liability to some extent by taking certain steps termed as 'amends'. Does the existence of this provision then prevent the extention of the common law defence of innocent dissemination to 'printers' as canvassed by counsel for the first defendant? After giving my careful consideration to that issue, I do not think there in any such limitation to the extention as above stated, imposed by the language or purport of that s 7 or for the matter of the Act itself.

[64] There is also good reason and supportable policy grounds why an extention of the common law defence of 'innocent dissemination' in a libel action should be extended beyond the area of 'subordinate distributors'. This would be in tandem with developments of law in other jurisdiction which recognise that the modern day 'printer', most often, has no control over the contents of matters presented to them for printing, particularly in the context of currently available digital and technological developments, a feature of the realities of our commercial activity evident and accepted in the present day.

[65] The first defendant has shown that he did not known or had any reason to believe that he was contributing to the publication of a defamatory material when he undertook the printing of the two issues of IMN containing P1 and P2. On the evidence before the court, I do not find that the first defendant was reckless or careless in undertaking printing of the two issues of IMN for the third defendant, thereby publishing the defamatory material. I am satisfied that the first defendant has a good defence on that count of 'innocent

dissemination' and I so hold.

DAMAGES

[66] Libel is actionable per se, that is to say, the plaintiff is not required to show any actual damage. Libel is in law dealt with greater severity (if contrasted with mere slander) because a greater degree of mischief is probable as a consequence of the more durable character of the offending material complained of.

[67] Damages in a libel action are assessed and awarded on a compensatory basis for injury to feelings and the distress caused to the plaintiff and to some extent to vindicate the plaintiff's reputation in the eyes of the public. The amount to be awarded will depend on the circumstances of each case and will take into considerations various factors including the standing of the plaintiff in society, the serious nature or gravity of the libel and mode and extent of the publication, the absence of any apology, amongst others (*Tan Chong & Sons Motor Co Sdn Bhd v Borneo Motors (M) Sdn Bhd & Anor* [2001] 3 MLJ 140; [2001] 4 CLJ 296 and *Cassell & Co Ltd v Broome and another* [1972] AC 1027).

[68] However the fact that damage is presumed does not mean that a substantial award of damages is to be made where on the evidence it is shown that the plaintiff has only suffered limited damage as a result of the publication.

[69] I have commented earlier in this judgment on the standing of the plaintiff. I have noted from the testimony of the plaintiff before the court under cross-examination that the plaintiff's career did not appear to have suffered or been adversely affected by the publication of the defamatory material. She appears to me by her personal choice now to be starring more in serials rather than in films, that is subsequent to the publication of the two articles in 1998.

[70] I have also taken into consideration the uncontradicted evidence before the court that only between 10,000 to 15,000 copies of the IMN were printed each month about the year 1998 and they were sold or distributed mainly in Malaysia either to subscribers or over the counter at bookstalls. Only a very minimum number of copies were sent or distributed elsewhere overseas. In ordinary course of events it is also not wrong to conclude that the readership of IMN was rather restricted to a narrow segment of society, namely the Indian community interested in entertainment and Indian film related news and information. This was definitely unlike the situation where the defamatory statement is found published in a daily local newspaper or a international magazine attracting a wider audience or reach of readers (*Utusan Melayu (M) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor* [2005] 2 MLJ 397; [2005] 1 CLJ 71).

[71] Counsel for the second, third and fourth defendants have urged upon me that to hold, in the light of the plaintiff's own admission of her own conduct at about the time the defamatory material was published (namely, being involved with a Malaysian businessman, marriage to this person while he was still married to another, being cited as co-respondent in a divorce proceedings, providing a wrong date of marriage when registering her marriage in Malaysia, suggestions of bigamy/adultery), that the plaintiff did not have a 'reputation' to be compensated about. I have commented on this aspect of evidence earlier above at para 56 of this judgment. I need only reproduce what R Malanjum J observed on this point, as well, in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd*'s case:

> It is settled, however, that the law does not permit a defendant to lead evidence of a particular acts or misconduct on the part of a plaintiff in mitigation of damages where the defendant has failed to justify the libel complained of ... or are irrelevant and do not amount to a plea of justification.

Like in that court, I have here held in this instant case that the second, third and fourth defendants have failed in their defence of justification. Hence, such evidence of any particular acts or misconduct is not is not acceptable by this court as a mitigating factor to be given consideration in respect of the damages to be awarded.

[72] There was admittedly a delay of about five years in filing this writ after the event of publication of the materials complained of in April and August 1998. Be that as it may, it must be noted here that the second, third and fourth defendants have not made any offer to correct, retract or make an apology and that they have pursued their defence of justification right through the trial despite knowing for themselves at some point before the trial commenced that there were at least some areas in the offending statements which were not true at all; these are finally now conceded and admitted in the written submissions of counsel for the said defendants, as earlier observed by this court.

[73] The plaintiff has pleaded for aggravated and/or exemplary damages to be awarded as well. On the facts and material before this court, I do not think there are sufficient reasons shown to the satisfaction of this court to award any sum as aggravated or exemplary damage. Aggravated damages may be awarded in circumstances where defendants's conduct is established to be high handed or oppressive, thereby increasing the plaintiff's humiliation or anxiety arising from the libelous statement. None is established here on evidence. Exemplary damages is punitive in nature and I am not satisfied that in the circumstances of this case such an order of damages is warranted against any of the defendants.

There will therefore be only a single or global sum as damages as compensation

for the plaintiff.

JUDGMENT OF THE COURT

[74] Following from my decision that:

(a) the first defendant has succeeded to persuade the court that they have a valid defence, namely of 'innocent dissemination' in respect to the publication of the defamatory material in P1 and P2 relating to the plaintiff; and

(b) the second, third and fourth defendants on the other hand have failed to establish their pleaded defence of justification and are therefore liable for the publication of the defamatory material contained in P1 and P2 relating to the plaintiff,

there shall be judgment entered against the second, third and fourth defendants only.

(a) The second, third and fourth defendants as joint tortfeasors shall pay the plaintiff:

(i) the sum of RM70,000 as damages in libel; and

(ii) interest on the said judgment sum of RM70,000 at the rate of 8%pa from date of this judgment until full settlement of the same.

(b) Costs:

(i) The second, third and fourth defendants is to pay the plaintiff costs of this action to be taxed unless agreed; and

(ii) The first defendant shall bear its own costs.

Plaintiff's action allowed in part with costs.

Reported by Kohila Nesan